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April 10, 2006

DEPARTMENT OF ENERGY  
OFFICE OF HEARINGS AND APPEALS

*Hearing Officer's Decision*

Name of Case: Personnel Security Hearing

Date of Filing: November 30, 2005

Case Number: TSO-0321

This Decision considers the eligibility of XXXXXXXX XXXXXXXX (hereinafter referred to as "the individual") to hold an access authorization under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." As explained below, it is my decision that the individual's access authorization should be restored.

I. BACKGROUND

The individual is an employee of a Department of Energy (DOE) contractor, and was granted a DOE access authorization in 1996. In June 2004, the individual submitted an Incident Report to the DOE indicating that he had been charged with aggravated battery. In August 2004, the DOE conducted a Personnel Security Interview with the individual (the 2004 PSI). In addition, the individual was evaluated in June 2005 by a DOE-consultant psychiatrist (the DOE-consultant psychiatrist), who issued a report containing his conclusions and observations in July 2005.

In October 2005, the Manager for Personnel Security of the DOE area office where the individual is employed (the Manager) issued a Notification Letter to the individual. In this letter, the Manager states that the individual's behavior has raised security concerns under Sections 710.8(h) of the regulations governing eligibility for access to classified material. Specifically, with respect to Criterion (h), the Notification Letter finds that the DOE-consultant psychiatrist diagnosed the individual as meeting the Diagnostic and Statistical Manual of the American Psychiatric Association, IV Edition TR (the "DSM-IV-TR") criteria for

"Intermittent Explosive Disorder, mild"; and "Antisocial Personality Traits". The DOE-consultant psychiatrist also finds that these conditions cause, or may cause, a significant defect in the individual's judgment or reliability. The Notification Letter refers to the following incidents involving the individual which are related to this diagnosis:

1. On June 11, 2004, he was arrested for domestic violence, aggravated battery against a household member and interference with communication;
2. In 1994, he was arrested for domestic violence;
3. In 1986, he was arrested and charged with negligence and child endangerment which was later changed to aggravated assault on his one year old step son;
4. In 1982, he was arrested for auto burglary; and
5. he acknowledged several arrests that occurred prior to 1983 when he was in his late teenage and early adult years for alcohol and/or marijuana possession.

See Notification Letter Enclosure 2 at 1-2.

The individual requested a hearing (hereinafter "the Hearing") to respond to the concerns raised in the Notification Letter. In his initial response to those concerns, the individual asserted that he finds disconcerting the DOE-consultant psychiatrist's diagnosis of an illness or mental condition that may affect his judgment and reliability. He also acknowledged that the issue of his 2004 arrest raises very serious concerns that he intends to address at the Hearing. Individual's October 25, 2005 Request for Hearing.

The requested hearing in this matter was convened in February 2006 (hereinafter the "Hearing"). At the Hearing, the testimony focused chiefly on the concerns raised by the individual's past incidents of domestic violence, and on the individual's efforts to mitigate those concerns through counseling and through the use of improved communication and anger management practices in his family life.

## II. *REGULATORY STANDARD*

In order to frame my analysis, I believe that it will be useful to discuss briefly the respective requirements imposed by 10 C.F.R. Part 710 upon the individual and the Hearing Officer. As discussed

below, Part 710 clearly places upon the individual the responsibility to bring forth persuasive evidence concerning his eligibility for access authorization, and requires the Hearing Officer to base all findings relevant to this eligibility upon a convincing level of evidence. 10 C.F.R. §§ 710.21(b)(6) and 710.27(b),(c) and (d).

A. *The Individual's Burden of Proof*

It is important to bear in mind that a DOE administrative review proceeding under this Part is not a criminal matter, where the government would have the burden of proving the defendant guilty beyond a reasonable doubt. The standard in this proceeding places the burden of proof on the individual. It is designed to protect national security interests. The hearing is "for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization." 10 C.F.R. § 710.21(b)(6). The individual must come forward at the hearing with evidence to convince the DOE that restoring his access authorization "would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.27(d). *Personnel Security Review (Case No. VSA-0087)*, 26 DOE ¶ 83,001 (1996); *Personnel Security Hearing (Case No. VSO-0061)*, 25 DOE ¶ 82,791 (1996), *aff'd*, *Personnel Security Review (VSA-0061)*, 25 DOE ¶ 83,015 (1996). The individual therefore is afforded a full opportunity to present evidence supporting his eligibility for an access authorization. The regulations at Part 710 are drafted so as to permit the introduction of a very broad range of evidence at personnel security hearings. Even appropriate hearsay evidence may be admitted. 10 C.F.R. § 710.26(h). Thus, by regulation and through our own case law, an individual is afforded the utmost latitude in the presentation of evidence which could mitigate security concerns.

Nevertheless, the evidentiary burden for the individual is not an easy one to sustain. The regulatory standard implies that there is a presumption against granting or restoring a security clearance. See *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) ("clearly consistent with the national interest" standard for the granting of security clearances indicates "that security determinations should err, if they must, on the side of denials"); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance). Consequently, it is necessary and appropriate to place the burden of persuasion on the individual in cases involving national security issues. In addition to his own testimony, we generally expect the individual in these cases to bring forward

witness testimony and/or other evidence which, taken together, is sufficient to persuade the Hearing Officer that restoring access authorization is clearly consistent with the national interest. *Personnel Security Hearing (Case No. VSO-0002)*, 24 DOE ¶ 82,752 (1995); *Personnel Security Hearing (Case No. VSO-0038)*, 25 DOE ¶ 82,769 (1995) (individual failed to meet his burden of coming forward with evidence to show that he was rehabilitated and reformed from alcohol dependence).

#### B. *Basis for the Hearing Officer's Decision*

In personnel security cases under Part 710, it is my role as the Hearing Officer to issue a decision as to whether granting an access authorization would not endanger the common defense and security and would be clearly consistent with the national interest. 10 C.F.R. § 710.27(a). Part 710 generally provides that "[t]he decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all relevant information, favorable and unfavorable, as to whether the granting or continuation of access authorization will not endanger the common defense and security and is clearly consistent with the national interest." 10 C.F.R. § 710.7(a). I must examine the evidence in light of these requirements, and assess the credibility and demeanor of the witnesses who gave testimony at the hearing.

#### III. *HEARING TESTIMONY*

At the Hearing, testimony was received from seven persons. The DOE presented the testimony of the DOE-consultant psychiatrist. The individual presented the testimony of his anger management counselor, himself, his wife, his wife's aunt, his supervisor, and his former supervisor. 1/

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1/ As indicated by the testimony of the DOE-consultant psychiatrist (Hearing Transcript, "TR", at 12-13), his experience clearly qualifies him as an expert witness in the diagnosis and treatment of psychiatric disorders. The individual's anger management counselor has a masters degree in counseling, and is a licensed professional counselor with seven years of experience in domestic violence counseling. TR at 107, Individual's January 30, 2006 Pre-Hearing Exhibits at 1. Accordingly, I find that she qualifies as an expert in the field of domestic violence counseling.

A. *The DOE-consultant Psychiatrist*

The DOE-consultant psychiatrist testified that he evaluated the individual in June 2005. He stated that prior to 1982, the individual admitted to abusing drugs and alcohol, to "a couple of burglaries of houses" and to an arrest for stealing \$200 to \$300 worth of tools from a truck. TR at 16. The individual reported to the DOE-consultant psychiatrist that while incarcerated for ten days for the tool theft in 1982, he had a "kind of religious conversion" and vowed to mend his ways. TR at 17. The DOE-consultant psychiatrist stated that the individual appeared to mend his ways with respect to his misuse of drugs and alcohol, and to committing crimes such as burglary. TR at 17. However, he noted that the individual's three arrests after 1982 raised the different problem of violence toward family members. He stated the individual's arrests in 1986, 1994 and June 2004 indicated "an ongoing pattern of significant violence, violence enough for an arrest to happen." TR at 18-19.

The DOE-consultant psychiatrist testified that because of this ongoing pattern, he diagnosed the individual with an intermittent explosive disorder, mild. TR at 25. He explained that he described the disorder as mild because typically an intermittent explosive disorder involves a violence element that "has to be grossly out of proportion to the precipitant." *Id.* He stated that it was not clear that the individual's reaction in all three of the family violence episodes were grossly out of proportion to the precipitant. TR at 26.

The DOE-consultant psychiatrist testified that intermittent explosive disorder can be treated

through psychotherapy, finding other ways of realizing the anger, getting to the roots of it, accepting it, and then finding other behaviors to use, other than the violence, in dealing with your anger.

TR at 27. The DOE-consultant psychiatrist stated that he also diagnosed the individual as having antisocial personality traits, based on his early history of burglaries and of impulsive drug and alcohol use.

Even though the antisocial personality traits were not enduring, I thought they were clinically significant. They kind of worsen the prognosis. . . . In other words, he had problems as a young man, which seem to have gotten better, but in a sense reemerged in a different sort of

problem, but a similar one.

TR at 28. The DOE-consultant psychiatrist concluded that because of the long-standing nature of the individual's problem with controlling his anger, and the fact that it appeared to be a recurrent problem, he concluded that the individual had a mental disorder of a nature that was likely to affect his judgment and reliability in the future. TR at 31.

Under questioning from the individual, the DOE-consultant psychiatrist acknowledged that the individual's behavior leading to his 1994 arrest may not have been inappropriate, and that this could affect his diagnosis.

[You] could argue that it's pushing it to call [the individual's violent behavior] pervasive or recurrent, because the violence, which is the big concern I would think here for me clinically, . . . are episodic, and you might argue that rather than recurrent - - and the one that happened with your ex [girlfriend] 12 years ago, and I guess in that one you did act appropriately.

TR at 35. With regard to the individual's legal problems arising from the 1986 injury involving his son, the individual asserted to the DOE-consultant psychiatrist that he voluntarily accepted a twenty day diagnostic incarceration at a correctional facility, and that the doctors there did not find him to be a significant threat to family members. TR at 39. The DOE-consultant psychiatrist replied that the individual's twenty day court ordered diagnostic evaluation at a correctional facility usually is used for investigating "a pretty serious charge of violence or physical danger." TR at 40. He concluded that

It looks like there still was enough of a concern that . . . there were charges of aggravated assault that remained [after the diagnostic evaluation], and it was serious enough that there was a five year probation, and I believe it was a court-ordered anger management program, and so it did sound like they determined that it was an episode of some significance.

TR at 40-41.

#### *B. The Individual's Anger Management Counselor*

The individual's anger management counselor (the individual's counselor) testified that the individual was ordered by a court in

2004 to take part in her 24-week domestic violence prevention course. TR at 104. She stated that her counseling of the individual addressed impulse control and coping skills and communication skills in a group setting. TR at 108-109. She stated that the individual was a model client.

He came in a little bit resistant on the front end, but by the time he finished the course, he was actually a role model for a lot of the younger guys in the class.

*Id.* The individual's counselor stated that she was aware of the 2004 incident that led to the individual taking part in her course.

Basically, it was a family dispute involving his wife, basically kind of a transitional thing going on with the new-blended family, and an issue with the stepdaughter and her cell phone.

TR at 105. At the Hearing, the individual's counselor stated her opinion to the individual that he had made substantial progress in dealing with violence issues.

Basically, by the end of your program with me, it became clear that you have traditional values, ethics, standards, and I would say that you're a man of integrity. I think that you've made mistakes in your life, and I think that you've been accountable and responsible for those mistakes. I think you're always willing to look at your behavior and to work on your behavior, and to me, that's a sign of progress within a program like this.

TR at 107. She stated that she did not believe that the individual needed further treatment for anger management. TR at 110. When asked to assess his prognosis for future violence or impulse control problems, she indicated that he had a very low prognosis for future problems.

Well, in my opinion, he may be in the upper 90<sup>th</sup> percentile as far as really looking at his behavior, changing his behavior, and to me those are the indicators of what his future behavior is going to be.

TR at 112.

C. *The Individual*

The individual testified that it was hard for him to comment on the DOE-consultant psychiatrist's diagnoses.

They seem to be a little in-depth. I try to decipher them, but I do understand that I had issues in the past that concerned him, and, like I said, I've taken steps to reduce those.

TR at 63. The individual acknowledged that he has problems controlling his anger, and that his actions were "extreme" in the 2004 incident with his wife. TR at 63-64. He also stated that prior to 1982, he was involved in drug and alcohol abuse, and petty crime, but that after reflecting on his life during his 1982 incarceration, he successfully turned away from those activities. TR at 66-69.

But from that point on, it's changed my life. I mean, I'm not perfect as I'd like to be, but I haven't done any drugs or alcohol or even smoked cigarettes - this August, it will be 24 years.

TR at 69.

The individual stated that the 1986 charges of child negligence and endangerment arose when his step-son experienced a severe brain injury after being dropped.

I had my child and took him out of the bath. I had him in my hands, took him out of the bathtub wet, and he slipped, and he hit his head on the bathtub. . . . I took him to the . . . hospital, which was just blocks away.

I didn't know what kind of injuries he had or anything. He just seemed to be unconscious.

Tr at 72-73. The individual denied that he was angry at the time of his son's fall.

I was feeling good. I was just giving him a bath. I had no issues at all.

TR at 76. The individual stated that when the state raised the issue of charging him for child negligence and endangerment, he accepted a plea-bargain of no contest to a lesser charge of



aggravated assault and accepted five years of probation. TR at 78-79.

With regard to the 1994 domestic violence incident, he stated that he and his girlfriend argued about the delinquent behavior of her eight year old son. When his girlfriend continued to argue after they went to bed, he turned in the bed and pushed her. His girlfriend then called the police, and he was arrested when he admitted to the police that he had pushed her. TR at 81-83.

I thought it was extreme, not what I did but the arrest for that. They could have told me to leave the house or something, but they arrested me, and after that, I said, "I'm not going to go there with this," and I moved out.

TR at 83. He stated that he now believes that he behaved inappropriately in the incident because "I shouldn't lay my hands on anybody." TR at 84. He does not think that his girlfriend over-reacted by calling the police, but he still thinks that the police over-reacted in arresting and charging him. TR at 84. He stated that he pled guilty to Domestic Violence and agreed to take court ordered anger management classes for six weeks. TR at 84. He testified that he got less out of that class than the one he took in 2004.

I don't know that I felt if I needed [the 1994 classes] at the time. I mean the incident really grew when I got arrested and everything, but maybe at the time I didn't feel it was a very big issue, I'd say.

TR at 85.

The individual stated that the 2004 incident began when he and his wife argued about his wife's high cell phone bill. At the time, they were both unaware that his step-daughter had been using the phone and running up charges.

We were in a face-to-face confrontation right [in the kitchen] arguing about the phone bill, and I pushed her away, and I believe I cursed at her and walked off to the bedroom. She followed me there, and we began to argue again, and I think I cursed at her again, or something, and she threw the water bottle at me. I reacted. I picked it up, threw it right back at her. I believe her cell phone was on the dresser, and then she threw that at me, and I just picked it up and threw it right back. I believe I hit her with both. I believe that she hit me with one or the other. Then she went to call the police,

and I yanked the cord, and I told her, "Why are you going to call the police on me? You started it."

So that's when I yanked the phone out, and she left, she went into the living room, or wherever she went, and I stayed in the bedroom, just cooling down, because I knew it had already gone too far.

TR at 89-90. The individual stated that the police then arrived and arrested him. The individual testified that he believed that calling his wife a bad name precipitated the violent part of their argument. TR at 91. He stated that in their eight year marriage, that was the only instance where he had cursed her and acted violently towards her. TR at 92.

The individual testified that he now believes that his wife did the right thing in calling the police. TR at 94. He said that he has benefitted greatly from the 2004 anger management class and that he now has tools to keep disagreements over small matters from escalating. TR at 97. He stated that in 2004, he was open to acknowledging that his behavior towards his wife had been inappropriate and that he needed to do something to address that problem. TR at 99. He stated that in addition to his anger management counselor, he and his wife have sought pastoral counseling concerning the incident. TR at 100.

#### *D. The Individual's Wife*

The individual's wife testified that she was aware before her marriage of the individual's past criminal history and his past problems with drugs and alcohol. TR at 47. With regard to the June 2004 incident, she stated that in the course of an argument over her cell phone bill, she threw a water bottle and a cell phone at the individual, and that he threw them back at her, bruising her on the forehead and her leg. TR at 52. She stated that she called the police before he got the phone from her, and that they arrived and arrested the individual after questioning them separately. TR at 52-53.

The individual's wife stated that this was the only incident in their marriage when the individual acted violently towards her. TR at 54. She stated that at the time of the incident, they had been receiving pastoral counseling concerning problems that they were having with her daughter, and that they continued this counseling because of what happened during the June 2004 incident. She stated that

Our relationship between us has been - it's been really good, been strong. We go to church. We both work. We do a lot of couples activities. We've gone to a lot of different conferences to try to strengthen our marriage. Step family classes, we went to those. We've gone to numerous couples conventions, weekend conventions, and so we've tried to build our relationship, knowing when we came in that we have certain obstacles just because we are a step family.

TR at 48. She stated that since the individual completed his 2004 anger management counseling, he has implemented techniques for keeping their disagreements from escalating. TR at 51. She stated that he now takes time to slow down and deliberately walk away from an argument. She stated that sometimes he will go for a walk or a drive for half an hour so that an argument won't get out of hand. *Id.* She testified that she believes that he now has the coping tools that he needs to avoid violence.

I think he's got a good handle on things, and, personally, I think he already understands that if anything even gets close to [violence], there is always an option to go to our pastor or another good friend of his who is a licensed minister. Just to go to talk, before anything ever comes close to like it did last time.

TR at 56.

*E. The Individual's Wife's Aunt*

The individual's wife's aunt testified that she works at the church that the individual and his wife attend, and that she sees them there on Wednesday nights, Sunday mornings and Sunday nights. TR at 115. She stated that the individual is

an awesome man. He's responsible. He's a very hard worker. He loves the Lord. He puts God in his home, like he should. A lot of the kids at church like him. He's done a lot with the youth.

Tr at 116. She testified that she sees her niece and the individual as a loving couple, and that he is a very good father to her niece's children. TR at 116. She stated that the individual has never acted in a violent manner towards her or towards anyone she knows. TR at 118. She stated that she knew nothing about the individual's argument with his wife in June 2004 and his subsequent

arrest. 119-120. She stated that the individual is well-regarded by his wife's parents. TR at 122.

*F. The Individual's Former Supervisor*

The individual's former supervisor testified that he hired the individual about ten years ago, and supervised him until 2004. TR at 136. He stated that he never had to admonish or discipline the individual for unprofessional behavior in the workplace. Tr at 134-135. He stated that he was not aware of the individual ever acting violently towards anyone. TR at 136-137. He does not socialize with the individual outside of the workplace except at Christmas parties and summer get-togethers for co-workers. *Id.*

*G. The Individual's Current Supervisor*

The individual's current supervisor stated that he has worked with the individual for ten years and has been his supervisor since 2004. TR at 142. He stated that the individual has no history of violence in the workplace.

He's honest, he's pretty straightforward, dependable, and as far as any blow-ups or anything like that, it's not happened.

TR at 140. He stated that he did not see the individual outside the workplace. *Id.*

*H. The DOE-consultant psychiatrist's Follow-Up Testimony*

After hearing the testimony of the individual and the other witnesses, the DOE-consultant psychiatrist stated that there were new and positive insights in the testimony that affected his diagnosis and prognosis for the individual. TR at 164-165. He stated that he believed that the individual's wife's description of their June 2004 argument indicated that it was the type of argument that reasonably could escalate, and where the individual's actions were not grossly out of proportion to the precipitant.

The amount of violence, I thought, was there, but it was an understandable marital argument toward part of the spectrum rather than a grossly out-of-proportion act of violence sort of episode. I think she gave a realistic version from her side of the argument, including giving her responsibility, and I think that was helpful to the [individual].

TR at 165. He stated that the fact that their marriage remains strong nearly two years after this incident is a good prognostic sign of a healthy marriage relationship. TR at 166. He stated that the wife's testimony indicated that domestic violence was not a pattern, either in her current marriage to the individual or in her former marriage, also was a positive prognostic factor, because a pattern of enabling or codependency towards violence would be harder to overcome. *Id.* He stated that the individual's counseling relationship with his pastor appears to have been productive and provides the individual with an important future resource in dealing with conflict. TR at 167.

The DOE-consultant psychiatrist stated that he was impressed that the individual's anger management counselor described him as a role model for her group and placed him in a 90-plus percentile for avoiding future violence. TR at 168. Finally, the DOE-consultant psychiatrist stated that the manner in which the individual presented himself at the Hearing was positive for his prognosis.

He seemed to be acknowledging the problems, in general, and gave pretty believable, I thought, explanations of how things happened, owned up to what he did, and had a good plan for avoiding it in the future - more than when I first saw him.

TR at 168. The DOE-consultant psychiatrist stated that in light of these developments, and the fact that no new episodes of violence had taken place in the period since June 2004, that he could not clinically justify a current diagnosis of Intermittent Explosive Disorder for the individual. TR at 169. He testified that the Intermittent Explosive Disorder has "gone from mild to in remission." He stated that the individual's diagnosis of Antisocial Personality Traits is based on his youthful behavior and remains of some concern, but he concluded that

I don't think they have clinical significance in terms of is he going to become violent again, and that's the main issue.

TR at 170. He stated his opinion that the individual no longer has a condition that would cause a significant defect in his judgment or reliability in the future.

In the past, the main problems were the intermittent explosive anger episodes, and given the changes that have happened in his treatment and his life, I don't think

there's a reasonable fear that that would happen again in the future.

TR at 171.

#### IV. ANALYSIS

The individual believes that his acknowledgment of his problem with anger, his counseling activities, and his efforts to implement better communication skills in his family life fully mitigate the Criterion (h) security concerns arising from his diagnosis of Intermittent Explosive Disorder, mild. He also asserts that since 1982, he has demonstrated reformation from the anti-social drug and alcohol related criminal activities that form the basis for his diagnosis of Antisocial Personality Traits. For the reasons stated below, I conclude that the individual's arguments and supporting evidence on these issues mitigate the security concerns.

In the administrative review process, it is the Hearing Officer who has the responsibility for forming an opinion as to whether an individual with a diagnosed mental condition has mitigated the security concerns raised by that diagnosis. See 10 C.F.R. § 710.27. The DOE does not have a set policy on what constitutes mitigation for security purposes of a diagnosed mental condition, but instead makes a case-by-case determination based on the available evidence. Hearing Officers properly give a great deal of deference to the expert opinions of psychiatrists and other mental health professionals regarding whether an individual's mental condition will lead to future defects in the individual's judgment and reliability. See, e.g., *Personnel Security Hearing (Case No. TSO-0031)*, 28 DOE ¶ 82,950 (2003) (possibility of relapse was too great for an individual with Bipolar Affective Disorder to retain her access authorization); *Personnel Security Hearing (Case No. VSO-0027)*, 25 DOE ¶ 82,764 (1995) (individual found to have demonstrated rehabilitation from a diagnosis of alcohol abuse).

At the Hearing, the DOE-consultant psychiatrist concluded that the individual's diagnosis of Intermittent Explosive Disorder, mild, and Antisocial Personality Traits currently was in full remission, and that the possibility was very low that the individual would engage in anti-social acts or would exhibit violent behavior in the future. The individual's anger management counselor also testified that the individual's prognosis for acting violently was very low.

I agree with the assessments made by these mental health professionals. My positive assessment of the individual's demeanor and of the evidence presented at the Hearing convince me that the

individual has recognized his problems with anti-social behavior and with anger management, and that he has dealt with them effectively. Since 1982, the individual consciously has avoided the abuse of drugs and alcohol, and has engaged in no drug related criminal activities such as burglary. In light of the individual's longstanding commitment to his church and to his family life, there is a reasonable basis for believing that these anti-social activities will not recur.

With respect to his problem with domestic violence, I find that the individual has received extensive counseling, both from his anger management counselor and his pastor, that has helped him to recognize his problem and to develop communication skills and other tools to avoid allowing disputes to escalate to physical violence. His wife's testimony convinces me that she and the individual are working together to resolve domestic conflicts in a non-violent manner and are committed to building a positive marriage relationship. I agree with the DOE-consultant psychiatrist that the testimony of the individual and his wife have established that the June 2004 episode of domestic violence was an isolated event in their relationship and is very unlikely to be repeated in the future. The testimony of the individual's supervisor and former supervisor convinces me that the individual has not had a problem controlling his temper in the workplace in the ten years that he has been employed by a DOE contractor. In light of these factors, I find that the individual has mitigated the DOE's Criterion (h) concerns.

#### V. CONCLUSION

For the reasons set forth above, I find that the Notification Letter's derogatory information under Criterion (h) has been mitigated by sufficient evidence of reformation from youthful patterns of anti-social behavior and by the individual's efforts to acquire and practice effective anger management skills in his family life. Accordingly, after considering all of the relevant information, favorable or unfavorable, in a comprehensive and common-sense manner, I conclude that the individual has demonstrated that granting him access authorization would not endanger the common defense and would be clearly consistent with the national interest. It therefore is my conclusion that the

individual's access authorization should be restored. The individual or the DOE may seek review of this Decision by an Appeal Panel under the regulation set forth at 10 C.F.R. § 710.28.

Kent S. Woods  
Hearing Officer  
Office of Hearings and Appeals

Date: April 10, 2006